2004

Eric M. Martineau v. City of Orem : Brief of Appellant

Utah Court of Appeals

Robert J. Church; Counsel for Appellee.
James L. Driessen; Counsel for Appellant.

IN THE UTAH COURT of APPEALS
STATE OF UTAH

Title of Case in the Trial Court: Orem v. Martineau No. 045208157 City of Orem, Plaintiff vs. Eric M. Martineau, Defendant	**APPELLANT'S BRIEF** Docket No. 20041029
Title of Case in the Court of Appeals: Orem v. Martineau No. 20041029-CA	
Eric M. Martineau, Appellant vs. City of Orem, Appellee	Appeal from the 4th District Court, Orem Department Judge John C. Backlund
	Filing This Brief
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STATEMENT SHOWING JURISDICTION OF THE APPELLATE COURT

This Court has jurisdiction pursuant to Utah Code Ann. §78-2a-3(2)(e). This appeal is from a final judgment in the 4th District Court, State of Utah, Utah County, Orem Division, by Honorable Judge John C. Backlund. Appellant has not filed any Rule 50(b), 52 (b), or Rule 59 motions.

STATEMENT OF THE ISSUES

Issue 1:

Whether trial court erred in placing itself as an expert of the physical sciences, ignoring physical sciences, or mistaken as to the physical sciences of the facts and thereby reciting a *per se* "3 second"[1] rule finding that the vehicle in question could not "get to the next lane" even though the speed of the vehicle was not questionably unsafe and the actual distance was 1000 feet, there were no other vehicles being overtaken or passed, and testimony suggested the distance was 200-300 meters? (Note: Physical science dictates that in order for the vehicle in question to have traveled a distance of 1000 feet in less than 9 seconds, it would necessarily have to have been traveling at an average speed of about 78 mph)

Issue 2:

Whether trial court erred in applying strict liability for "safe" lane movement based on signage or traffic control devices?

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[1] Orem v. Martineau, Trial No. 045208157 pg 39-line 7, pg 40-line 11, *Official transcript of hearing,*(10-18-2004)

DETERMINATIVE RULES AND STATUTES

Determinative Statutes: U.C.A. 1953 Const. §7; § 76-2-304; §41-6-20; §41-6-22; §41-6-23; §41-6-61, (subsequently Renumbered and Amended by Chapter 2, 2005 General Session). Also see *Federal Highway Commission, Manual on Uniform Traffic Control Devices(MUTCD)*, 2003 Edition with Revision No. 1 Incorporated, effective July 21, 2004 Determinative Law: As to trial court's determinations of the facts pertaining to speed and the "laws of physics" see *State v. Lingman*, 91 P.2d 457 (Utah 1939). A trial court's findings of fact in a criminal bench trial are reviewed under a clearly erroneous standard. See City of Orem v. Lee, 846 P.2d 450, 452 (UT App.1993). A trial court's finding is clearly erroneous if it is "against the clear weight of the evidence, or if the appellate court otherwise reaches a definite and firm conviction that a mistake has been made," Spanish Fork City v. Bryan, 975 P.2d 501, (UT App. 1999). A determination of law is reviewable nondeferentially for correctness, as opposed to being a fact determination reviewable for clear error. A trial court's error of law will be a *De Novo* review. See *State v. Pena*, 869 P.2d 932, 936 (Utah 1994).

STATEMENT OF THE CASE

Nature, Course, and Disposition of these Proceedings

This case comes to appeal from a proceeding involving a simple traffic ticket. Yet, at the heart of this appeal are found the basics of due process for any municipality's enforcement of a statutorily prohibited action. Crimes are often spoken of as being divided into the categories of acts wrong in themselves, called "acts *mala in se*," and acts which would not be wrong but for the fact that positive law forbids them, called "acts *mala prohibita*." See *State v. Shedoudy*, 118 P.2d 280 (N.M. 1941).

Many traffic violations (such as drunk driving) have become *malum in se* because although merely prohibited under penalty, they have been defined as inherently wicked or naturally evil by the senses of a civilized community from the very nature of the activity upon principles of natural, moral, and public law irrespective to the fact of its being noticed or punished by the law of the state.

On the other hand, in the present case, the nature of these proceedings arise out of a state or municipality's erection of traffic control devices which resulted in a huge increase in the number of traffic tickets being issued at a particular intersection. The 4th District Court – OREM Traffic Report index (see attached sample printout) shows that during the time period between the opening of the newly remodeled intersection, some time in July of 2004, and the correction of the faulty signage, some time in December of 2004, violations for "IMPROPER USAGE OF LANES" increased by the hundreds. Where normally there would have been only 5-10 lane change violations per month for the entire municipality, police were now writing several tickets every day for lane violations and all at the same location. Most of the recipients of those citations chose the traffic school option and received diversionary dispositions. When the Appellant/Defendant, however, after receiving a ticket at the location, took it upon himself to lodge his complaints with the municipality and the state highway authorities, the signage was eventually corrected and the extraordinary number of infractions at that intersection immediately subsided; for which the Appellant/Defendant was grateful, but when he argued his ticket with the district court, however, it was not dismissed.

Relevant Facts

Adjacent to Exit 272 Interstate highway 15 (I-15) and University Parkway interchange, Appellant (defendant in traffic court) an out of state driver from Nevada,

was traveling on College Drive (also known as 12th West) in Orem, Utah, which is a frontage road to I-15. As College Drive winds around Utah Valley State College, it veers away from parallel to I-15 and takes an easterly direction where a right lane forms which at the time was a newly constructed exit from College Drive, "hook ramp" onto University Parkway in Orem Utah.

After recent construction and redesign of the "mixing bowl" in the heavily traveled area where University Parkway became the only access and separation between College drive, Sandhill Road, and the I-15 Exit 272 interchange, people traveling on College Drive seeking access to westbound University Parkway were confronted with signage and other traffic control devices.

Appellant had opportunity to observe the following traffic control devices while approaching the College Drive "hook-ramp:" The signage on College Drive prior to the University Parkway intersection consisted of one MUTCD M1-1 Interstate Route Sign and one MUTCD R3-5 type "intersection lane control" sign. Additionally, just over the small knoll, although not visible until on the "hookramp" itself, the letters ONLY I-15 NB were printed in white letters on the pavement.

At the time of the incident (prior to UDOT making changes to the traffic control devices in the area) *no* traffic control signs, devices, or other indicators were placed or erected where drivers of vehicles wishing to enter Westbound University Parkway from College Drive could be alerted as to how they were to proceed. It appears now, months after the alleged infraction, that new signage was erected which seems to indicate that drivers wishing to enter the Westbound University Parkway traffic from College drive

should first merge left instead of right at the "hookramp," continue several hundred meters eastward toward the Utah Valley State College "round-about" at Sandhill Road, enter the roundabout, then enter Sandhill Road and travel another several hundred meters on Sandhill road to the traffic light, and only there make the right hand turn for access onto University Parkway, Westbound, at the light. In other words, there were no signs at the time indicating which course of action motorists were to take. Nor were there signs or indicators prohibiting entry onto the hook ramp for drivers wishing to enter the westbound traffic of University parkway, except for the "ONLY I-15 NB" letters painted on the pavement visible only once already on the hookramp.

Without the aid of the new signage, Appellant then did not maneuver his vehicle left and did instead maneuver his vehicle into the right lane and did remain in right lane and did enter the "hookramp" and did enter onto University Parkway Westbound. Immediately after the "hookramp," Appellant merged left across two lanes covering a distance of just under 1000 feet while merging onto Westbound University Parkway despite two approximately 800 foot long white lines ("gore area") painted on the roadway. For information on the uses of these traffic control devices see U.T.C.A 1953 § 41-6a-301(2)(b) Renumbered and Amended by Chapter 2, 2005 General Session; See also *Federal Highway Commission, Manual on Uniform Traffic Control Devices(MUTCD)*, 2003 Edition with Revision No. 1 Incorporated, effective July 21, 2004.

Summary of Argument

Errors of both fact and of law at trial allowed the defendant to be convicted of a traffic offense. When prosecutors of the municipality at the State trial court attempted to enforce such a traffic crime of *Malum prohibita,* a) it was the burden of the prosecutor to establish that an actual breach of statute had occurred (the elements of the violation as charged had been met); and b) if the prosecutor wished to substitute another crime in place of the crime charged in which the elements may have been met, the prosecutor should have also been required to overcome the affirmative defense that a violation under any such substituted statute could not have been enforced if at the time and place of the alleged violation, the "traffic-control device [was] not in proper position and sufficiently legible to be seen by an ordinarily observant person." See. U.T.C.A. 1953 § 41-6a-304 Renumbered and Amended by Chapter 2, 2005 General Session; State v. Lehi, 73 P.3d 985 (Utah 2003) UT App 212, review denied 78 P.3d 987; See also U.C.A. 1953, Const. Art. 1, § 7; Apprendi v. New Jersey, U.S.N.J.2000, 120 S.Ct. 2348, 530 U.S. 466.

Appellee, Prosecutor's, mentioning of three different statutes, §41-6-61 U.C.A, §41-6-63.30 U.C.A., and 41-6-69(1) in his previous actions and motions in this case confirm that violations occurring in the instance of these conflicting traffic control devices was inherently problematic even in deciding which statute to charge. See Appellee's Motion for Summary Disposition; see also § 41-6a-710, §41-6a-713, and §41-6a-804 Renumbered and Amended by Chapter 2, 2005 General Session.

It is also a requirement of the prosecution to charge under the correct violation. Rule 4 Utah R. Crim Pro. The prosecution now claiming on Appeal that the Defendant

could have also been in violation of other statutes is irrelevant and should not be considered in a disposition under the charged statute. "Whether an amendment charges an additional or different offense turns on whether different elements are required to prove the offense charged in the amended information or whether the offense charged in the amended information increased the potential punishment from that originally charged." *State v. Bush*, 47 P.3d 69 (Utah App.,2001) citing *State v. Ramon*, 736 P.2d 1059, 1062 (Utah Ct.App.1987).

Signs and other traffic control devices cannot ever be perfect and are "presumed to comply" with the traffic code (See U.C.A. § 41-6a-304(4)). But when a court fails to even consider legibility and position of traffic control devices under the charged statute, it should not then be permitted as a prosecutorial tool to consider the presence or absence of other traffic control devices not included in the statute charged (such as an alleged "gore area" designation, or "3-second" rule). These pick and choose approaches to finding elements of multiple statutes had become akin to posting both a "RIGHT TURN ONLY" and "NO RIGHT TURN" sign and then a court using those conflicting traffic control devices as a basis for citing and convicting a driver for either or both.

A trial court's findings of fact in a criminal bench trial are reviewed under a clearly erroneous standard. See *City of Orem v. Lee*, 846 P.2d 450, 452 (UT App.1993). A trial court's finding is clearly erroneous if it is "against the clear weight of the evidence, or if the appellate court otherwise reaches a definite and firm conviction that a mistake has been made," *Spanish Fork City v. Bryan*, 975 P.2d 501, (UT App. 1999).

The trial court's finding of fact in this case, that crossing of two lanes within a distance of approximately 1000 feet of highway by using a "3 second unsafe" rule was against the clear weight of the evidence and clearly erroneous.

A determination of law, on the other hand, is reviewable nondeferentially for correctness, as opposed to being a fact determination reviewable for clear error. A trial court's error of law will be a *De Novo* review. See *State v. Pena*, 869 P.2d 932, 936 (Utah 1994). It was sufficiently argued and found at trial that for all practical purposes, "there are probably people that are confused because of the new signage," but convicted Defendant none-the-less through in erroneous findings in the law. See Orem v. Martineau, Trial No. 045208157 pg 39-line 2-3, *Official transcript of hearing* (10-18-2004).

Appellant maintains that a finding of fact that the signage was confusing and/or improperly placed should have warranted a finding in the law that any ordinarily observant person driving a vehicle and wishing to enter the University Parkway westbound from College Drive would have been induced by that signage present at the time to enter the so-called "hookramp." Only after on the "hookramp" could any of the drivers have possibly seen painted on the roadway the letters "ONLY I-15 NB." Then only as drivers entered westbound University Avenue traffic, could they first have encountered the approximately 800' plus long double white line leading up to the triangular island area where University Parkway access to Interstate I-15 Northbound onramp was situated. The drivers were "trapped." Those drivers were either going to be

kidnapped and forced onto I-15 or they had to do their best to safely maneuver across the lanes in attempt to correct the mistake the designers of the road signs had created.

The prosecutor and trial court judge must have been well aware of the problems with the traffic control devices at this intersection; they had processed hundreds of similar cases about the same intersection in the same court (See attached sample report). There should have been no mistake in the facts that the signs were faulty and had to be replaced. Yet, the prosecutor and the trial court continued to prosecute, convict, and collect fines from drivers amounting to thousands of dollars in revenues.

The prosecutor's dartboard style of prosecuting under any one of three statutes, U.T.C.A. 1953 §41-6-61; §41-6-63.30, or § 41-6-69(1) for the same alleged infraction, could not cure the faulty signage. The trial court's allowing ebb and flow in the amending of charges post trial also did not cure the problem of a faulty charge against the defendant.

Detail of Argument

Issue 1

Whether trial court erred in placing itself as an expert of the physical sciences, ignoring physical sciences, or mistaken as to the physical sciences of the facts and thereby reciting a *per se* "3 second"[2] rule finding that the vehicle in question could not "get to the next lane" even though the speed of the vehicle was not

[2] Orem v. Martineau, Trial No. 045208157 pg 39-line 7, pg 40-line 11, *Official transcript of hearing,*(10-18-2004)

questionably unsafe and the actual distance was 1000 feet, there were no other vehicles being overtaken or passed, and testimony suggested the distance was 200-300 meters? (Note: Physical science dictates that in order for the vehicle in question to have traveled a distance of 1000 feet in less than 9 seconds, it would necessarily have to have been traveling at an average speed of about 78 mph)

A mistake in finding of fact was made a trial which the court relied heavily upon in its announced findings of fact and verdict. A trial court's finding is clearly erroneous if it is "against the clear weight of the evidence, or if the appellate court otherwise reaches a definite and firm conviction that a mistake has been made," *Spanish Fork City v. Bryan*, 975 P.2d 501, (UT App. 1999).

During the announcement of findings and verdict at trial, the trial judge stated, "But I don't agree with you that it's legal to go across three lanes without trying to establish a line position for three seconds and have your blinker on for traffic so that traffic behind you knows where you're going and anticipate ... There's no way in the world that you can maintain even at 25 miles an hour let alone the 45 mile an hour speed limit on University Parkway three seconds in that lane and then have your turn signal on and then get to the next land for three seconds and then across the gore area." Orem v. Martineau, Trial No. 045208157 pg 39-line 7-13, pg 40-line 9-11, *Official transcript of hearing,*(10-18-2004).

A mistake of math is a mistake of fact. It is a mistake of fact for reversible error especially if that math is relied upon by the judge in making a legal determination. In *Selvage v. J.J. Johnson*

& Associates where there was "no clear mathematical support for the result," the court of appeals could not affirm and award based on those facts. See *Selvage v. J.J. Johnson & Associates*, 910 P.2d 1252 (Utah App.,1996). Likewise in this traffic court, a conviction should not be upheld where the finding of a mathematical calculation relied upon by the judge therein was faulty.

The distances at the location in question from the end of the "hookramp" to the point where the double white lines separate into the triangular island area between the continuing University Parkway and westbound traffic contains about 1000 feet of roadway upon which a motorist could move from lane to lane and engage those maneuvers with turn signals. (See map attached).

The judge at trial court chose to rely on his own mathematical calculation. The judge also indicated his knowledge of the physical layout of the area in question. The mathematical calculation that should have been used to decide whether there was "no way in the world" that a motorist could "maintain even at 25 miles an hour let alone the 45 mile an hour speed limit on University Parkway three seconds in that lane" to make the proper signals and lane changes should have been as follows:

1. There are exactly *5,280* feet per one mile
2. Therefore any vehicle traveling any given number of miles per hour would also necessarily be traveling *5,280* times that in feet per hour.
3. There are exactly *60* minutes per one hour, *60* seconds per each minute, and therefore *3,600* seconds per each one hour.

4. Any vehicle traveling any given number of miles per hour in the area in question would therefore also necessarily be traveling one thirty sixth hundredth (*1 / 3,600*) of those miles per hour as calculated in miles per second.
5. Therefore for every mile per hour a vehicle a traveled, it would also necessarily have been be traveling approximately *1.4667* feet per second (5,280/3,600).
6. A vehicle traveling *25* miles per hour (as suggested by the judge) in the area in question would necessarily also be traveling *36.6667* feet per second (25 x 1.4667) and would require approximately *27.3* seconds to travel the *1000* feet.
7. A vehicle traveling *45* miles per hour (also as suggested by the judge) in the area in question would necessarily also be traveling exactly 66 feet per second (45 x 1.4667) and would require approximately *15.2* seconds travel time to cover the *1000* feet in question.
8. In order for a vehicle to maneuver to the left from the hook ramp lane to make to make *3* lane changes consisting of *3* seconds each, a vehicle would require just *9* seconds. So it seems there would be "a way in the world" for a motorist to make three lane changes within the 1000 feet in question even if following a "3 second rule."

While it may not have been a requirement of the judge to make such calculations, when the judge chose on his own accord to make such calculations and then got them wrong, there was a clear mistake of fact and those facts should not have been relied upon at trial.

It was fair to presume that the trial court relied only on evidence properly admissible in making its finding in the absence of a clear showing to the contrary and a reviewing court must give great weight to the findings made and the inferences drawn by the trial judge, but it must reject his findings if it considers them to be clearly erroneous. A finding is "clearly erroneous" when although there is evidence to support it, the reviewing court on the entire evidence is left with the definite and firm conviction that a mistake has been committed. *State v. Walker*, 743 P.2d 191, 193 (Utah,1987). A vehicle could have traversed the distance in question at a speed of 25 or 45 mph as suggested by the judge and still had ample time to navigate the lane changes allowing for 3 seconds per lane change, which was contrary to the finding relied upon by the court.

Issue 2

Whether trial court erred in applying strict liability for "safe" lane movement based on signage or traffic control devices?

In this case, the trial court applied improper law allowing for a conviction under one statute where all the elements had not been met simply because some of the elements under another statute may have been met. To find for a conviction in this manner was a clear mistake in law. It is not the court's job to judicially create a new crime because the defendant could be found in violation of several individual elements of several different crimes. In order to be found guilty of a crime, a defendant must be found in violation of *all* the elements of any one or more crime for which he had been charged. The court should not mix and match until it feels there is enough for a crime. For a trial court to

find a defendant guilty of a crime in which all the elements had not been met would be a mistake of law and reviewable *De Novo*. *Supra.*

It also cannot be proper on appeal for the prosecutor to argue that defendant could have violated some of the elements of another crime for which he was not charged. For example, in a forgery case, the defendant had signed his own name to the Deed on the line reserved for Grantor and could not be held guilty of the crime of forgery despite the fact that elements of other crimes may have been met. See *State v. Jensen,* 105 P.3d 951 (Utah App.,2004).

At the trial in the present case, the trial court judge announced that he found the defendant "guilty of disobeying a traffic control device as found in Section 41-6-61 subparagraph 3. I'll grant the city's motion to amend to conform to the facts in the case." Orem v. Martineau, Trial No. 045208157 pg 39-line 14-17, *Official transcript of hearing,*(10-18-2004). The trial judge went on, "It may be where you wanted to go and you felt trapped because you felt the signs preceding that [were] ambiguous, but it doesn't give you the right to go across the gore area once you've determined that you're in the wrong lane. So the court is going to find you guilty for that reason." Orem v. Martineau, Trial No. 045208157 pg 39-line 20-25, *Official transcript of hearing,* (10-18-2004).

Since §41-6-61 U.C.A. language clearly made no mention of a "gore area" in the statute, the extent of coverage for that statute charged was at issue. A "gore area" if crossed by the appellant on the day in question would have been a completely different violation if it could have been supported by the evidence, but the reviewing court may also consider as to the determination of law whether the double white line, "gore area,"

was yet another traffic control device for which Appellant alleged in trial court were arguably in conflict with each other.

The trial court seemed to have inadvertently created some new law for applying strict liability for "safe" lane movement where the crossing of a "gore area" (double white line, not the island area) was somehow determined unsafe *per se*. Since the defendant's traffic citation (similar to the hundreds of citations processed around the same time and same location in question) came through the trial court's jurisdiction, the Judge was well aware of the traffic flow problems in the area, but sought to introduce evidence himself to counter any witness testimony about the ambiguity of the signage – as if to justify his own findings of the law.

Beginning on page 21 of the court transcript, the judge asked officer Tracy Merit of the UVSC Police, "If you go on I-15 you have to turn right, don't you? The way you can go to get on I-15 is to turn right … aren't they all compatible? Isn't turning right going north? Isn't turning right going on I-15? I mean, how are those incompatible?

The judge then went on to answer his own questions. "If you turn right and go on I-15 north you're obeying every single one of those directions, aren't you .. I think, you know, if I think this through logically." Orem v. Martineau, Trial No. 045208157 pg 21-line 15 – pg 22-line 10, *Official transcript of hearing,* (10-18-2004). The judge continually presented the witness with dialog technically in the form of questions, but instead of allowing the witness to answer, the judge continually cut off the witness so that the judge could answer his own questions himself.

The judge seemed to want to justify his decision in law by substantiating whether a vehicle desiring access to I-15 North from the hookramp would not be in violation of any of the posted signage or traffic control devices. But the judge was not willing to entertain the question of whether or not a vehicle that did not wish to get on I-15, as in the case of the defendant and hundreds of others processed by the court, were in violation of any posted signage or traffic control devices or if any of those devices were arguably confusing or ambiguous. The judge did not seem to wish to allow the above witness or any witness to testify as to ambiguity of the signs.

The trial court judge went on to try and supplant his own motives for defending his position on ambiguity and his feelings on the law to someone else. He wanted to question the motives of the Department of Transportation, "What possible motive would the Department of Transportation have as you say to kidnap motorists and force them onto northbound I-15 ... There is no reason or underlying motive there that you can tell me why would the Department of Transportation care which direction a vehicle wants to go? What interest do they possibly have in trying to force people to go northbound by intentionally, being intentionally ambiguous about the signs?" The defendant, on the other hand, had not raised any issues as to the motives of the Department of Transportation; he merely raised the issue that if he had not merged onto University Parkway, he felt he would have been kidnapped by someone (not someone in particular). See Orem v. Martineau, Trial No. 045208157 pg 40-line 14 – pg 41-line 9, *Official transcript of hearing,* (10-18-2004).

In using the Department of Transportation, the judge was defending his own decision on the law about the ambiguity of the signage and whether the double white line, "gore area," was yet another traffic control device for which Appellant alleged in trial court were arguably in conflict with each other. The trial judge wanted to ignore the fact that thousands of dollars in revenue for fines and traffic school fees were being collected through his own court. The judge may have had his own motives but chose to deflect them onto the Department of Transportation.

A proper decision on the law should not have supported the notion that one improper or ambiguous traffic control device such as the signage on College Drive (12th West) could not be related or associated with another traffic control device, such as the "gore area" on University Parkway. A proper decision in the law would have allowed for the fact that the meanings of designated traffic control devices must be taken in the entirety – fully dependant on the meanings of what one traffic control device may purport to another traffic control device in question. For example, "I-15 North" used alone compared with or in conjunction with another sign such as "ONLY," as alleged in this case, would have completely different meanings. Another example might be a lane shift sign directing vehicles to cross over white lines normally used as lane markings, but to ignore them during certain construction projects.

In this case, the signage on College Drive (12th West) for all practical purposes directed and/or failed to direct vehicles wishing to enter University Parkway westbound about any lane restrictions until it was too late and even then the alert was ambiguous. It

wasn't until already on the hookramp that one could observe the white letters painted on the pavement, "I-15 NB ONLY."

The defendant also pointed out to the court that "section 2E.16 of the MUTCD states: The words north, south, east, and west shall not be abbreviated when used with route signs to indicate directions on guide signs." Orem v. Martineau, Trial No. 045208157 pg 27-line 13-18, *Official transcript of hearing,* (10-18-2004). See also *Federal Highway Commission, Manual on Uniform Traffic Control Devices(MUTCD)*, 2003 Edition with Revision No. 1 Incorporated, effective July 21, 2004. But the court had its own motives and sought to find in law that two white lines painted on the pavement prevented any finding for "safe" lane movement. Such a finding should be determined here to be a mistake in law and therefore reviewable *de novo.*

The signs at the location in question and at the time in question should have been considered together before making any determination as to ambiguity, improper position, or illegibility. The crossing over of two painted white lines should not have been determined "unsafe" lane movement unless the totality of the situation was taken into consideration. In this case, the mistake in law should be reversed.

Concluding Statement Including Statement of Relief Sought

The City prosecutor and the presiding judge over this case would inherently have been made aware of the problem signage in the area; all the similar traffic violations at that intersection were processed in the court of their own jurisdiction. Yet, the prosecutor was able to continue to prosecute and obtain convictions generating thousands of dollars in revenue under the notion that "there are people that don't want to go through the inconvenience of going left and going into the round-about and going through the traffic light and then coming out on

University Parkway" Orem v. Martineau, Trial No. 045208157 pg 38-line 22-25, *Official transcript of hearing,*(10-18-2004).

Unfortunately for the Defendant, the Court having gone down that path of "*malum in se*" prosecution of these alleged failures to follow the arguably faulty traffic control devices prevented a proper consideration of this case. Like so many other similar infractions at the same location, the trial court again found the ambiguous signage could not in any way have been the cause for the defendant, like so many other people, being confused as to what course to take in order to enter University Parkway westbound; when in law, improper signage should under most circumstances have been a perfect and affirmative defense to any of the *malem prohitum* traffic ordinances. See U.C.A. §41-6a-304

Once proper signage was placed at the location, due at least in part to the Defendant's complaints to the local and State authorities, people did naturally cease to enter the hookramp to access University Parkway Westbound. People no longer seemed to have a problem navigating left to the round-about in order to make the right hand turn onto the Parkway. These ordinarily observant drivers, like the Defendant, if given proper direction, would not have entered the hookramp and would not have been faced with the necessity of choosing the least dangerous action to overcome the perilous situation in which they had been placed by the faulty signage. For all the reasons stated above the Appellant requests that this court find that there have been mistakes both in fact and in law and reverse the decision of the trial court.

Dated this 9th day of Aug., 2005
Driessen Law

BY: James L. Driessen
James L. Driessen
Attorneys for Appellant Eric Martineau

ADDENDUM LIST

1. Representative Page from The 4th District Court – OREM Traffic Report Index Print-Out Filing Dates 06/01/2004 - 12/01/2004. Note: Full Print-out available upon request (about 90 pages).
2. Aerial views of College Drive "Hook-ramp" (1200 south 800 West area) Orem, UT. Google Earth (v3.0) Release - August, 2005 (v3.0.04xx - Public Beta3).
3. Reproduction of determinative constitutional provisions, statutes, and rules

Defendant Name	Case Num	Case Type	Disposition	Charge	Filing
TUDD, KIERA J	045207762	Traffic Citation		SPEEDING	09/22/2004
KLUG, SHERYL A	045207763	Traffic Citation		IMPROPER USAGE OF LANES	09/22/2004
LOVELAND, JAMES E	045207764	Traffic Citation	Disposed	SPEEDING	09/22/2004
STEWART, TONIA A	045207765	Traffic Citation	Disposed	IMPROPER USAGE OF LANES	09/22/2004
ARMENTOR, EDWARD D	045207767	Traffic Citation	Disposed	IMPROPER USAGE OF LANES	09/22/2004
MULLINGS, JAMES P	045207768	Traffic Citation	Disposed	RED LIGHT VIOLATION	09/22/2004
VAZQUEZ, JUAN HECTOR	045207769	Traffic Citation	Disposed	FAIL TO YIELD-ENTER/CROSS HIGHWAY	09/22/2004
HOUSEKEEPER, MARIA LINDA	045207770	Traffic Citation	Disposed	UNAPPROVED LIGHTING EQUIPMENT OR	09/22/2004
KITEMURA, TEWNOSHI	045207771	Traffic Citation	Disposed	HEADLIGHTS NOT IN WORKING ORDER	09/22/2004
ALVEA, MARTA A	045207772	Traffic Citation	Disposed	SPEEDING	09/22/2004
FARNSWORTH, NATHANIEL W	045207773	Traffic Citation	Disposed	SPEEDING	09/22/2004
PLOTTS, DYLAN	045207775	Traffic Citation	Disposed	NO DRIVERS LICENSE IN POSSESSION	09/22/2004
GREENSTREET, STEVEN E	045207776	Traffic Citation		SPEEDING	09/22/2004
CHRISTENSEN, KELLAN CLARK	045207777	Traffic Citation	Disposed	SPEEDING	09/22/2004
CLEARWATER, MELISSA MADDY	045207778	Traffic Citation		FAILURE TO REGISTER VEHICLE	09/22/2004
DIANATKHAH, NICKOLAS HOSS	045207779	Traffic Citation	Disposed	SPEEDING	09/22/2004
CLARK, TYLER SEAN	045207782	Traffic Citation		OPERATION OF VEHICLE WITHOUT PAY	09/22/2004
DEMARCO, MICHAEL A	045207785	Traffic Citation		*SPEEDING	09/22/2004
MCNALL, SCOTT AARON	045207787	Traffic Citation		SPEEDING	09/22/2004
GORDON, ALAN LAAULI	045207788	Traffic Citation		SPEEDING	09/22/2004
TOMLINSON, STEVEN D	045207790	Traffic Citation	Disposed	SPEEDING	09/22/2004
CLARK, BASIA	045207791	Traffic Citation	Disposed	IMPROPER USAGE OF LANES	09/22/2004
LARR, KEARA D	045207793	Traffic Citation	Disposed	IMPROPER USAGE OF LANES	09/22/2004
TERNON, JAMES A	045207795	Traffic Citation	Disposed	IMPROPER USAGE OF LANES	09/22/2004
WILSON, AMBERLY	045207796	Traffic Citation	Disposed	IMPROPER USAGE OF LANES	09/22/2004
INTON, MATTHEW S	045207798	Traffic Citation	Disposed	IMPROPER USAGE OF LANES	09/22/2004
RIGGS, KIMBERLY	045207799	Traffic Citation	Disposed	IMPROPER USAGE OF LANES	09/22/2004
ELFORD, DAVID N	045207808	Traffic Citation	Disposed	IMPROPER USAGE OF LANES	09/22/2004
USTIN, TYLER M	045207810	Traffic Citation		IMPROPER USAGE OF LANES	09/22/2004
RADY, TALON M	045207811	Traffic Citation	Disposed	IMPROPER USAGE OF LANES	09/22/2004
ATKINS, DARIN WARNER	045207816	Traffic Citation		FAILURE TO REGISTER VEHICLE	09/22/2004
DWARDS, JULIE	045207820	Traffic Citation	Disposed	IMPROPER USAGE OF LANES	09/22/2004
ILLIAMS, TREVOR J	045207824	Traffic Citation	Disposed	IMPROPER USAGE OF LANES	09/22/2004
YON, GEORGE P	045207825	Traffic Citation	Disposed	IMPROPER USAGE OF LANES	09/22/2004
ARRIES, JENNY	045207826	Traffic Citation	Disposed	IMPROPER USAGE OF LANES	09/22/2004
ARLSON, JASON D	045207827	Traffic Citation	Disposed	IMPROPER USAGE OF LANES	09/22/2004
ARKINSON, SUSAN M	045207828	Traffic Citation		SPEEDING	09/22/2004

Addendum 2 (a)

Campus Dr
W 1200 S
Sandhill Rd
State Hwy 265
College Dr
S 800 W
Exit 272
15
N
E
W
S
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Addendum 2(b)

ADDENDUM 3 (6 Pages)

UTAH CODE, 1953
CONSTITUTION OF UTAH
ARTICLE I. DECLARATION OF RIGHTS

§ 7 [Due process of law.]

No person shall be deprived of life, liberty or property, without due process of law.

UTAH CODE, 1953
TITLE 41. MOTOR VEHICLES
CHAPTER 6. TRAFFIC RULES AND REGULATIONS
ARTICLE 3. TRAFFIC SIGNS, SIGNALS AND MARKINGS

41-6-20 Manual and specifications for uniform system of traffic-control devices and school crossing guards.

(1) (a) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the Department of Transportation shall make rules consistent with this chapter adopting a manual and establishing specifications for a uniform system of traffic-control devices for use upon highways within this state.

(b) The manual shall correlate with, and where possible conform to, the system set forth in the most recent edition of the "Manual on Uniform Traffic Control Devices for Streets and Highways" and other standards issued or endorsed by the federal highway administrator.

(2) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the Department of Transportation shall make rules adopting a manual and establishing specifications for a uniform system of traffic-control devices and school crossing guards for school crossing zones, which shall supplement the manual adopted under Subsection (1).

UTAH CODE, 1953
TITLE 41. MOTOR VEHICLES
CHAPTER 6. TRAFFIC RULES AND REGULATIONS
ARTICLE 3. TRAFFIC SIGNS, SIGNALS AND MARKINGS

41-6-22 Placing and maintenance upon local highways by local authorities.

Local authorities, in their respective jurisdictions, shall place and maintain official traffic-control devices upon highways under their jurisdiction as they find necessary to indicate and to carry out the provisions of this chapter or local traffic ordinances, or to regulate, warn, or guide traffic. All traffic-control devices erected under this section shall conform to and be maintained in conformance with the Department of Transportation manual and specifications for a uniform system of traffic-control devices under Section 41-6-20.

UTAH CODE, 1953
TITLE 41. MOTOR VEHICLES
CHAPTER 6. TRAFFIC RULES AND REGULATIONS
ARTICLE 3. TRAFFIC SIGNS, SIGNALS AND MARKINGS

41-6-23 Obeying devices --Effect of improper position, illegibility, or absence --Presumption of lawful placement and compliance with chapter.

(1) The operator of a vehicle shall obey the instructions of any official traffic-control device placed or held in accordance with this chapter unless at the time otherwise directed by a peace officer, and subject to the exceptions granted the operator of an authorized emergency vehicle.

(2) (a) Any provision of this chapter, for which official traffic-control devices are required, may not be enforced against an alleged violator if at the time and place of the alleged violation an official device is not in proper position and sufficiently legible to be seen by an ordinarily observant person.

(b) When a particular section does not state that official traffic-control devices are required, the section is effective even though no devices are erected or in place.

(3) When official traffic-control devices are placed or held in a position approximately conforming to the requirements of this chapter, the devices are presumed to have been placed or held by the official act or direction of lawful authority, unless the contrary is established by competent evidence.

(4) An official traffic-control device placed or held under this chapter and purporting to conform to the lawful requirements pertaining to that device is presumed to comply with the requirements of this chapter, unless the contrary is established by competent evidence.

UTAH CODE, 1953
TITLE 41. MOTOR VEHICLES
CHAPTER 6. TRAFFIC RULES AND REGULATIONS
ARTICLE 7. REGULATIONS APPLICABLE TO DRIVING ON RIGHT SIDE OF HIGHWAY, OVERTAKING, PASSING AND OTHER RULES OF THE ROAD

41-6-61 Roadway divided into marked lanes --Provisions --Traffic-control devices.

On a roadway divided into two or more clearly marked lanes for traffic the following provisions apply:

(1) A vehicle shall be operated as nearly as practical entirely within a single lane and may not be moved from the lane until the operator has determined the movement can be made safely.

(2) On a roadway divided into three lanes and providing for two-way movement of traffic, a vehicle may not be operated in the center lane except:

(a) when overtaking and passing another vehicle traveling in the same direction, and when the center lane is clear of traffic within a safe distance; or

(b) in preparation of making or completing a left turn or where the center lane is allocated exclusively to traffic moving in the same direction that the vehicle is proceeding and the allocation is designated by official traffic-control devices.

(3) Official traffic-control devices may be erected directing specified traffic to use a designated lane or designating those lanes to be used by traffic moving in a particular direction regardless of the center of the roadway. Operators of vehicles shall obey the directions of these devices.

UTAH CODE, 1953
TITLE 76. UTAH CRIMINAL CODE
CHAPTER 2. PRINCIPLES OF CRIMINAL RESPONSIBILITY
PART 3. DEFENSES TO CRIMINAL RESPONSIBILITY

76-2-304 Ignorance or mistake of fact or law.

(1) Unless otherwise provided, ignorance or mistake of fact which disproves the culpable mental state is a defense to any prosecution for that crime.

(2) Ignorance or mistake concerning the existence or meaning of a penal law is no defense to a crime unless:

(a) Due to his ignorance or mistake, the actor reasonably believed his conduct did not constitute an offense, and

(b) His ignorance or mistake resulted from the actor's reasonable reliance upon:

(i) An official statement of the law contained in a written order or grant of permission by an administrative agency charged by law with responsibility for interpreting the law in question; or

(ii) A written interpretation of the law contained in an opinion of a court of record or made by a public servant charged by law with responsibility for interpreting the law in question.

(3) Although an actor's ignorance or mistake of fact or law may constitute a defense to the offense charged, he may nevertheless be convicted of a lesser included offense of which he would be guilty if the fact or law were as he believed.